

Robert F. Hochwarth
General Attorney



Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2405

April 21, 1980

No. **0-114A036**

Date **APR 23 1980**

Fee \$ **50.00**

ICC Washington, D. C.

11714
RECORDATION NO. Filed 1425

APR 23 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

Mrs. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mrs. Mergenovich:

Enclosed are five executed counterparts of an Agreement dated as of April 15, 1980, between Fruit Growers Express Company, 1101 Vermont Avenue, N.W., Washington, D. C. 20005 (as Bailor), and The Chesapeake and Ohio Railway company, P. O. Box 6419, Cleveland, Ohio 44101 (as Bailee).

The equipment covered by the enclosed agreement consists of 37 cabooses to bear Bailee's road numbers 904094-904130, inclusive with AAR Mechanical Designation NE.

The above cabooses will be letter "C&O", "Chessie System" or in some other appropriate manner, and will also be marked:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

Also enclosed is a draft of The Chesapeake and Ohio Railway Company in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 U.S.C. Section 11303, you are hereby requested to file two of the enclosed counterparts for record in your office and to return the remaining copies to me at my above address.

Very truly yours,

Robert F. Hochwarth
General Attorney

RFH/mw

RECEIVED
APR 23 1 34 PM '80
I.C.C.
FEE OPERATION BR.



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

4/23/80

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Robert F. Hochwarth, Gen. Atty.
Chessie System
P.O.Box 6419
Cleveland, Ohio 44101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/23/80 at 1:40pm, and assigned re-recording number(s). 11711

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

11714

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(1)

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of April 15, 1980

between

FRUIT GROWERS EXPRESS COMPANY

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

37 Bay Window Cabooses

THIS AGREEMENT, dated as of April 15, 1980, by and between FRUIT GROWERS EXPRESS COMPANY, a corporation ("Manufacturer"), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation ("C&O"):

W I T N E S S E T H :

The Manufacturer and C&O entered into a Purchase Agreement, dated on or about October 6, 1978, as amended and modified by various correspondence and by such agreements as have been made or may be made between the parties (which Purchase Agreement, as amended and modified, whether now or in the future, is made a part hereof by reference), whereunder the Manufacturer agreed (among other things) to construct at its Alexandria, Virginia, plant and deliver to C&O at Alexandria, Virginia, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for:

37 Bay Window Cabooses, bearing C&O road numbers
904094 through 904130, inclusive.

Delivery of the Cabooses by the Manufacturer to C&O is scheduled to begin on or about April 30, 1980. However, inasmuch as C&O has not as yet consummated financing arrangements (pursuant to Equipment Trust Agreement, Conditional Sale Agreement or otherwise), it is not in position to accept delivery of and pay for the Cabooses under the terms of the said letter Agreement at this time. C&O represents that such financing arrangements will be consummated, however, on or before July 15, 1980. C&O (in order that it may use the Cabooses pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cabooses on their completion, solely as a bailee of the Cabooses, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O, and C&O hereby accepts from the Manufacturer, the Cabooses as of the date each of them is delivered to C&O at Alexandria, Virginia, or such other place as may be specified by C&O, for the period ending on the earlier of July 15, 1980, or the date of consummation of the above financing arrangements. At such time, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cabooses shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC §11303. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cabooses.

C&O agrees that it will permit no liens of any kind to attach to the Cabooses, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cabooses or the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Cabooses by C&O during the term of this Agreement.

C&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

C&O will, at its own expense, keep and maintain the Cabooses in good order and running condition and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cabooses which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Caboose to C&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Caboose, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION.

C&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cabooses.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Caboose, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cabooses as provided in the Manufacturing Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Purchase Agreement relating to the Cabooses. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counter-claim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cabooses, nor subject to any defense, set-off, counter-claim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Cabooses, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take, and pay for the Cabooses in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement.

FRUIT GROWERS EXPRESS COMPANY

By Walter A. Dake
Vice-President

[Corporate Seal]

Attest:

Robert W. Folger
Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY

By *R. L. White*
Senior Vice-President

[Corporate Seal]

Attest:

Patricia J. Sunday
Deputy Corporate Secretary

~~STATE OF~~ District of Columbia)
City of Washington) SS:
~~COUNTY OF COOK~~)

On this 22nd day of April, 1980, before me personally appeared W. A. DAHL, to me personally known, who, being by me duly sworn, says that he is a Vice-President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

L. W. Moffett
Notary Public

L. W. MOFFETT, Notary Public
City of Washington, District of Columbia
My Commission Expires October 14, 1982

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 17th day of April, 1980, before me personally appeared R. L. Hintz, to me personally known, who, being by me duly sworn, says that he is a Senior Vice-President of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

H. Marlene Winchell

H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

[Notarial Seal]

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In consideration of the premises, the Manufacturer hereby delivers to C&O, and C&O hereby accepts from the Manufacturer, the Cabooses as of the date each of them is delivered to C&O at Alexandria, Virginia, or such other place as may be specified by C&O, for the period ending on the earlier of July 15, 1980, or the date of consummation of the above financing arrangements. At such time, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

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C&O agrees that it will permit no liens of any kind to attach to the Cabooses, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cabooses or the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Cabooses by C&O during the term of this Agreement.

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FILED WITH THE INTERSTATE COMMERCE COMMISSION.**

C&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Caboose.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Caboose, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Caboose as provided in the Manufacturing Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Purchase Agreement relating to the Caboose. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

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C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Cabooses, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take, and pay for the Cabooses in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement.

FRUIT GROWERS EXPRESS COMPANY

By Walter A. Dahl
Vice-President

[Corporate Seal]

Attest:

Robert W. Polster
Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY
COMPANY

By *R. L. White*
Senior Vice-President

[Corporate Seal]

Attest:

Patricia J. Tunady
Deputy Corporate Secretary

~~STATE OF~~ District of Columbia)
City of Washington) SS:
~~COUNTY OF COOK~~

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L. W. Moffett
Notary Public
L. W. MOFFETT, Notary Public
City of Washington, District of Columbia
My Commission Expires October 14, 1982

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

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H. Marlene Winchell

H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

[Notarial Seal]